Court No.3

Criminal Revision No. 101 of 2003

Kailash Chandra Sharma … Revisionist.

Vs.

District and Sessions Judge Haridwar & others …. Respondents.

Hon'ble Irshad Hussain, J.

Heard Sri Navneet Kaushik learned counsel for the revisionist and the learned A.G.A. for the respondents.

This is a criminal revision against the order dated 30-6-2003 passed by the Sessions Judge Haridwar whereby the application under section 319 of the Code of Criminal Procedure was dismissed.

An application under section 319 of the Code of Criminal Procedure was filed before the Sessions Judge Haridwar on the ground that the witness Kailash Chandra Sharma (P.W.5) gave out that Ajnish Goyal and Alok Gupta have conspired to commit the offence and that although they were named in the F.I.R. they were not charge sheeted by the police after investigation as they were then absconding. It is pointed out that after three of the prosecution witnesses turned hostile the Investigating Officer took note of it and filed final report against these two so called culprits. The complainant has then preferred the protest petition on which the final decision is awaited.

Before the learned Sessions Judge the said witness Kailash Chandra Sharma made a bald statement that he has belief that the murder of his son Vishnu had been committed at the instance of Ajnish Goyal and Alok Gupta and further that on the day of the occurrence his wife told him that the victim was allegedly summoned by the said Alok Gupta. Normally direct evidence of conspiracy is not available and the allegation of conspiracy is based and proved by circumstantial evidence by taking together various facts and circumstances which form a chain to link the alleged conspirators with the commission of the crime. Considering this aspect it is to be noted that no incriminating circumstances forming a chain have been pointed out by the said witness Kailash Chandra Sharma and his bald statement was not sufficient to proceed against these two persons by taking resort to the provision of section 319 of the Code of Criminal Procedure.

Considering the aforesaid aspects the learned Sessions Judge appear to have not committed any impropriety in dismissing the application by the impugned order. There being no merit in this petition, the same is accordingly dismissed.

The dismissal of present revision however shall not as such be taken to reject the pending protest petition before the Magistrate.

(Irshad Hussain, J.)

Dated 13-10-03

ISB